

# CITY COUNCIL OF THE CITY OF ANNAPOLIS

## ORDINANCE NO. O-3-05

Introduced by Mayor Moyer

Alderman Hammond

Alderman Cordle

Alderman Carter

Alderman Fox

Alderman Cohen

### LEGISLATIVE HISTORY

First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
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1/10/05			
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Referred to:	Meeting Date:	Action Taken:
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Economic Matters		
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**AN ORDINANCE** concerning

### **Lease of City Dock Space to Chesapeake Marine Tours for 2011**

**FOR** the purpose of authorizing for fiscal year 2011 the lease of certain municipal property located at the City Dock to Chesapeake Marine Tours, Inc. for the docking and mooring of certain boats at the City Dock; and all matters relating to said lease.

\* \* \* \* \*

**WHEREAS,** the City of Annapolis and Chesapeake Marine Tours, Inc. have entered into a series of leases and amendments, the most recent being O-4-04, to lease through June 30, 2010, certain docking space at the City Dock at specified rental and under certain terms and conditions; and

**WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize a lease.

**SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the proposed Amendment to Lease, a copy of which is attached hereto and made a part hereof, between the City of Annapolis and Chesapeake Marine Tours, Inc. d/b/a Watermark Cruises, is hereby approved, and the Mayor is hereby

1 authorized to execute the Lease on behalf of the City. It is further expressly found by the  
2 City Council that the services to be provided as a result of the Lease will benefit visitors  
3 and residents of the City, will generate tax revenues and additional rental income to the  
4 City, and will better serve the public need for which the property was acquired.

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6 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**  
7 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its  
8 passage.

9  
10 **ADOPTED** this 11<sup>th</sup> day of April, 2005.

11  
12 **ATTEST:**

**THE ANNAPOLIS CITY COUNCIL**

13  
14  
15 **BY:**

16 **Deborah Heinbuch, MMC**  
17 **City Clerk**

**ELLEN O. MOYER, MAYOR**

18  
19  
20 **EXPLANATION:**

21 **Redlining indicates matter added to existing law.**

22 ~~Strike Out indicates matter deleted from existing~~  
23 ~~law.~~

24 Underlining indicates amendments.

LEASE

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between the CITY OF ANNAPOLIS, Lessor, and CHESAPEAKE MARINE TOURS, INC., Lessee.

WITNESSETH

A. The parties have heretofore entered into a succession of leases beginning in 1972 for Lessee to dock its vessels and carry on its business at City Dock. The current lease, as amended, will expire June 30, 2010.

B. By this document the parties intend to extend Lessee's right to occupy the same dock spaces at City Dock on the terms and for the rent hereinafter set forth.

C. The Annapolis City Council has authorized this lease pursuant to O-\_\_\_\_-05.

NOW, THEREFORE, in consideration of the rent reserved and the various agreements and covenants of the parties, they do agree as follows:

1. **Premises:** Lessor hereby rents and leases to Lessee, and Lessee hereby rents from Lessor for the term, at the rental and upon the condition covenants and agreements hereinafter set forth, the premises described as follows:—docking space at City Dock consisting of:

- a. The two end boat slips nearest the channel of Spa Creek known as Slips 20 and 21.
- b. The end of the dock adjacent to Slip 21 between two dolphins for a distance of not more than eighty feet (80'); and
- c. Sixty feet (60') along the boardwalk adjacent to the Harbormaster's office.

2. **Term:** The term of this lease shall be for a period of one (1) year beginning July 1, 2010, and ending June 30, 2011, under the same terms and conditions.

3. **Rental:** Lessee agrees and covenants to take and hold the leased premises as Lessee for the term set forth and agrees to pay Lessor as rental the following sums:

a. As rental for the period July 1, 2010, through June 30, 2011, the sum of the rental for the period July 1, 2009 through June 30, 2010, as adjusted by the cost of living index change between December 31, 2008 and December 31, 2009 using the U. S. Bureau of Labor Statistics national average CPI-U. Actual rent paid for the twelve month fiscal year ending March 31, 2005, was \$35, 757.93.

b. For the same period Lessee shall also pay, as additional rent, for electricity, the sum paid for electricity for the period July 1, 2009 through June 30, 2010 likewise adjusted by the same COLA change as described above. Actual electricity

1 paid for the twelve month fiscal year ending March 31, 2005, was \$1,843.47.

2 c. For the same period Lessee shall also pay, as additional rent, for refuse  
3 collection, the sum paid for refuse collection for the period July 1, 2009 through June  
4 30, 2010 likewise adjusted by the same COLA change as described above. Actual  
5 refuse collection paid for the twelve month fiscal year ending March 31, 2005, was  
6 \$662.98.

7 d. Lessee shall also pay from time to time, as additional rent, all taxes and  
8 other charges or fees required by law.

9 e. The yearly rent shall be calculated and billed by the City Department of  
10 Finance not later than July 1st of each year and shall be due and payable by Lessee  
11 thirty (30) days after receipt of said bill. All payments shall be made to the Department  
12 of Finance.

13  
14 4. **Purpose:** Lessee shall have authority to dock at the referenced docking spaces,  
15 an office barge and the passenger vessels Harbor Queen, No. 539448; Annapolitan II,  
16 No. 544467; Cabaret II, No. 1039051; Rebecca, No. 990491; Miss Anne, No. 635636;  
17 Miss Anne II, No. 672686; Catherine Marie, No. 1082215; Lady Sarah, No. 1160977;  
18 and four water taxi launches for the purpose of operating a cruise and water taxi service  
19 on the Chesapeake Bay and its tributaries. Lessee may replace any of the existing  
20 vessels, provided the replacement vessels are of the same general size and use in the  
21 Coast Guard certified passenger vessel service. Lessee agrees to use the referenced  
22 docking spaces for passenger vessel, sightseeing, boat charter and water taxi  
23 operations and for office space from which to conduct these operations.

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25 5. **Time and Use:** Lessor covenants that Lessee's vessels shall have use of the  
26 referenced docking spaces during the term of this Lease, subject to the terms and  
27 conditions contained in this Lease.

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29 6. **Lessor's Covenants:**

30 a. Lessor will attempt to keep the leased premises free and clear of  
31 unauthorized vessels when Lessee's vessels are away from their berth, but shall be  
32 under no obligation or responsibility to do so nor shall Lessor assume any liability for  
33 failing to do so.

34 b. Lessor shall have the right to remove from the leased premises any  
35 alterations made by the Lessee, its agents or employees, without the express consent  
36 of the Harbormaster. The cost of removal and/or repairs associated with the removal of  
37 any such unauthorized alterations, including any administrative costs incurred by the  
38 Lessor, shall be billed to the Lessee, and shall be due and payable promptly upon  
39 receipt by the Lessee.

40  
41 7. **Lessee's Covenants:**

1           a.       Lessee agrees that Lessor shall have the right and privilege, with the  
2 consent of Lessee, which consent shall not be unreasonably withheld, on not less than  
3 seven (7) days notice to the Lessee, to reclaim the leased premises, or any part thereof,  
4 in order to accommodate certain special events, shows or programs conducted from  
5 time to time on the City Dock, including prior contractual obligations of the Lessor, and  
6 Lessee shall vacate the leased premises and remove all of its vessels from the leased  
7 premises during any such period specified in the Lessor's notice. In the case of  
8 Lessee's vacation of the leased premises due to either or both of the annual sailboat  
9 and/or powerboat shows conducted on the City Dock, Lessee's consent is hereby given  
10 for each year during the term of this Lease, and Lessee shall not be entitled to any  
11 abatement of the rental hereunder. In the case of Lessee's vacation of the leased  
12 premises due to any other events, shows or programs, Lessee shall be entitled to a pro  
13 rata abatement of the rental hereunder, based on the ratio which the number of days of  
14 vacancy specified in Lessor's notice to Lessee bears to the total annual rental, and  
15 based on the portion of the premises vacated.

16           b.       Lessee agrees to pay the rent reserved at the time payable. Lessee shall  
17 be deemed to be in default of this covenant if, within ten (10) days of the due date, it  
18 shall fail to pay the rent, the additional rent, or any other charges due under the terms of  
19 this Lease. If Lessee shall default in the performance of any of the other covenants or  
20 conditions contained in this Lease, and fails to cure or remedy any such defaults within  
21 thirty (30) days after notice of such default is given in writing by the Lessor to the  
22 Lessee, or if Lessee fails to pay the rental or additional rental reserved hereunder within  
23 the time specified herein, then Lessee's right to possession hereunder shall thereupon,  
24 at the option of the Lessor, cease and terminate, and the Lessor shall be entitled to the  
25 possession of said premises and to re-enter without any further demand for rent or for  
26 possession, and may forthwith proceed to recover possession by process of law without  
27 any notice to quit or of intention to exercise such option, or to re-enter said premises, all  
28 such notices being hereby expressly waived by Lessee.

29           c.       That all signs desired to be erected by the Lessee must be approved by  
30 the Lessor and the Historic Preservation Commission of the City of Annapolis and any  
31 other agency if required by law.

32           d.       Lessee agrees to conduct its business in and about the City Dock in an  
33 orderly manner and to keep clean and neat its vessels and the area immediately  
34 adjacent to its mooring area.

35           e.       Lessee shall notify the Harbormaster whenever any of its vessels will be  
36 absent from any portion of the leased space for more than seventy-two (72) hours,  
37 during which time the Lessor may utilize any portion of the premises so vacated for any  
38 lawful purpose whatsoever without any abatement of the rental hereunder. Whenever  
39 Lessee vacates any portion of the leased space for more than seventy-two (72) hours, it  
40 will be required to give the Harbormaster twenty-four (24) hours notice of the intended  
41 return to the space vacated.

f. Lessee agrees not to discharge or board passengers at the plaza located at that portion of the City Dock closest to the Markethouse commonly known as the end of "Ego Alley."

g. Lessee shall comply with all federal, state and municipal licensing laws and regulations to insure that the vessels and crews are certified as appropriate and that its operations are operated in a safe and non-hazardous manner.

h. Lessee agrees that it will obtain liability insurance in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and Two Hundred Fifty Thousand Dollars (\$250,000) for property damage for each occurrence of injury or damage arising out of its operations at the City Dock. Lessee shall specifically name City of Annapolis as an additional insured and a copy of any such insurance policy will be filed with the City Clerk prior to occupancy hereunder. Lessee agrees to indemnify, defend, and hold harmless the Lessor, its agents, officers, and employees, from all actions, causes of action, claims or demands, and all liability arising through (or alleged to arise through) any act, omission, fault, or negligence of the Lessee, its agents or employees, during the term of this Lease.

i. This Lease may not be assigned or transferred by the Lessee without the written authority of the Lessor, which consent shall not be unreasonably withheld.

j. That, pursuant to authorization previously granted by Lessor to Lessee to change the location of tie piles and catwalk between the two slips rented by Lessee at the end of the City Dock, Lessee covenants and agrees that, at least ten (10) days prior to the expiration of this Lease or any renewal thereof, the tie piles and catwalk shall be returned to their original locations at the total cost and expense of the Lessee. All work shall be coordinated with and approved by the City of Annapolis Harbormaster or his designee. All permits for the removal from one location to another shall be the responsibility of the Lessee.

8. **General Provisions:** The captions of the several paragraphs of this Lease are inserted only as a matter of convenience and in no way define, limit, or describe the scope of intent of such paragraph or of this Lease. The terms contained in this Lease are intended to be binding upon and ~~inure~~ to the benefit of the parties, their heirs, legal representatives, successors, and assigns.

ATTEST:

LESSOR:

Deborah Heinbuch, MMC  
City Clerk

Ellen O. Moyer, Mayor

1 LESSEE:

2 ATTEST:

CHESAPEAKE MARINE TOURS,  
INC.

3 \_\_\_\_\_  
4 Debbie H. Gosselin, President

5  
6 Approved as to form and legal sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 2005

7 \_\_\_\_\_  
8 Shaém C. Spencer, City Attorney  
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